



**Stockton Unified School District
2141 Robindale Ave
Stockton, CA 95205**

**REQUEST FOR PROPOSAL
Wi-Fi Coverage Addition**

PROPOSAL NO. 986

The Governing Board of the Stockton Unified School District of San Joaquin County, California, invites and will receive sealed proposals until **2:30 p.m.** on

February 11, 2019

at the Stockton Unified School District, 2141 Robindale Ave Stockton, CA 95205, for the award of a contract, as follows:

Wi-Fi Coverage Addition

Proposals must be submitted on forms prepared by the Stockton Unified School District, including all applicable forms detailed and contained in this package.

Purchasing Department &
Information Services Department

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NOTICE TO CONTRACTORS CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that the Stockton Unified School District of San Joaquin County, California, acting by and through its Governing Board, hereinafter referred to as the DISTRICT will receive up to, but not later than **2:30 p.m.** of the 11th **day of February, 2019**, sealed bids for the award of a contract for **Wi-Fi Coverage Addition**.

Scope: The District needs additional wireless access points at specific schools to improve Wi-Fi coverage. This RFP asks the winning bidder to provide needed hardware, installation services, and support services to meet this need.

PLACE FOR SUBMITTING BIDS: Bids shall be received in the Office of the Purchasing Department of the Stockton Unified School District located at 2141 Robindale Ave. Stockton, CA 95205, and shall be opened publicly at the above-stated time and place.

Each bid must conform and be responsive to the contract documents, copies of which may be obtained on or after January 14, 2019 at <https://www.stocktonusd.net/Domain/155> or the EPC Portal site.

REQUIREMENTS FOR BID: Bids must be submitted on the Bid Form provided by the District and included in the bid documents. Each bid must strictly conform with and be responsive to this Notice Inviting Bids, the Instructions for Bidders, and other Contract Documents. The District reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding. Except as provided in Public Contract Code Section 5100 *et seq.*, no bidder may withdraw a bid for a period of sixty (60) calendar days after the opening of the bids.

ADDITIVE AND DEDUCTIVE ALTERNATES: If the District requires that bids include additive or deductive alternates, the Bid Form and Special Conditions will describe the specific alternates required. If no method for determining the lowest bid is specified, the award of the contract for the Project shall be based on the lowest base bid.

REQUIRED BID SECURITY: Each bid must be submitted with security in an amount not less than ten percent (10%) of the maximum bid amount as a guarantee that the bidder will enter into the proposed contract, if awarded to the bidder, and will provide the performance and payment bonds, insurance certificates and other documents described in the Contract Documents. Such security must be in one of the following forms: (1) a cashier's check made payable to the District; (2) a certified check made payable to the District; or (3) a bond made payable to the District in the form set forth in the Contract Documents. Any bond must have been issued by a California-admitted surety as defined in Code of Civil Procedure Section 995.120

REQUIRED CONTRACTOR LICENSE: The class(es) of California contractor's license(s) required in order to bid on and perform the contract for this Project is: C-7 Low Voltage Systems

PREVAILING WAGES: The successful bidder and each of its subcontractors of any tier will be required to pay not less than the general prevailing rates of per-diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the contract ("Prevailing Wages"). A copy of the per-diem rates of Prevailing Wages applicable to the Project is on file and available for review at the location specified above as the place for submitting bids, and a copy will be posted at the site of the Project.

Advertise Dates: 1/17/2019, 1/23/2019

SIGNATURE PAGE

Stockton Unified School District
Purchasing Department
2141 Robindale Ave
Stockton, CA 95205

Re: Request for: **Wi-Fi Coverage Addition**, RFP #986

To: Members of the Governing Board

The undersigned, doing business under the full and complete legal firm name as set forth below, having examined the Notice to Bidders, Bid Form, Instructions to Bidders, the General Conditions, the Specifications, the Agreement, and all other documents forming a part of the Bid package for the above-referenced Bid, hereby proposes to perform the Agreement, including all of its component parts, and to furnish all materials called by them for the entire order for the prices set forth in the quotation sheets contained in said Bid package. The entire Bid package is submitted, together with this Bid Form.

Name of Company _____

Legal Status _____
(i.e., Sole Proprietorship, Partnership, Corporation)

Tax I.D. Number _____
(Sole Proprietorship only)

Service Provider Ident. No. (SPIN) _____

DIR Registration No. _____

Address: _____

Authorized Representative: _____
Signature

Name (print or type)

Title

Date: _____

Telephone: _____

**NONCOLLUSION DECLARATION TO BE EXECUTED
BY
BIDDER AND SUBMITTED WITH BID**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this:

_____ day of _____

City of _____ State of _____

Signed: _____

Title: _____

INSTRUCTIONS

Scope

The District needs additional wireless access points at specific schools to improve Wi-Fi coverage. This RFP asks the winning bidder to provide needed hardware, installation services, and support services to meet this need.

Qualified Contractors

The District intends to solicit Bids for the above referenced services, from qualified contractors currently established in the business of providing wireless network infrastructure materials and services of the nature and scope specified herein.

Erate Funding

The District intends to obtain maximum funding discounts under the Federal Communications Commission's Erate program and under the California Utilities Commission's California Teleconnect Fund (CTF) for eligible services procured as a result of this RFP.

It shall be the responsibility of the Contractor to ensure that all Erate and CTF eligible services and products are identified to the District in writing.

Contractors shall review and comply with the District's Erate program instructions in [Section VI](#).

1. **Bids**

No Bids shall receive consideration by the Stockton Unified School District unless made in accordance with the instructions detailed herein.

The Bid must be in ink or typewritten. No pencil figures or erasures permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing Bid. No oral, telegraphic, facsimile, or telephonic modifications will be accepted. An electronic copy of the entire Bid (MS Word format) is to be provided with the written Bid.

2. **Bid Response**

Bid packages submitted by contractors must include the District's Request for Bid package, along with the Bid and Agreement forms. The signature of all individuals must be in long hand. The completed documents(s) should be without interlineations, alterations, or erasures. **Note: any exceptions to the bid documents may deem your proposal to be non-responsive.**

Bids must be submitted in the format and order outlined below. The Bid should present all information in a concise manner, neatly arranged, legible, and in terms understandable for evaluation. All information requested is to be addressed directly and completely. It is more desirable to give additional information than less when the answer could be misinterpreted. There should be no attachments, enclosures, or exhibits other than those considered by the bidder to be essential to a complete understanding of the Bid submitted. Each section of the Bid must be clearly identified with the following headings, and in the order specified, as detailed in "Section I through Section VI:

Section I

DESCRIPTION OF FIRM(S)

Provide a brief description of your firm(s), as well as any other firms joining with your firm to provide services. This description should include a history of the firm(s), number of employees, organizational structure of the firm(s), and a recent financial statement.

List and describe the State and Federal licenses, certificates, and legal authorizations (i.e., CPUC number, FCC ID number or license, etc.) that you hold which allow the provision of telecommunications services requested in this RFP. The contractor of award will be required to provide the District with copies of the actual licenses and certificates held.

Section II

EXPERIENCE AND QUALIFICATIONS OF FIRM(S)

Provide a brief overview of your technical experience, qualifications, and background in providing and maintaining network infrastructures. Indicate the prior experience of your firm that you consider relevant to this contract. Include sufficient detail to demonstrate the relevance of such experience.

Subcontractors Requirements: Any subcontractors performing services against this agreement must be fully listed and detailed in the Bid submitted by contractors. State any work proposed to be provided by a subcontractor, and provide evidence of each subcontractor's capability and willingness to carry out the work. For each proposed subcontractor, include firm name and address, management contact person, and complete description of work to be subcontracted. Include descriptive information concerning subcontractor's organization and abilities.

Contractor hereby agrees to bind every subcontractor by the terms and conditions of this bid agreement as far as such terms and conditions are applicable to the subcontractor(s) work. If contractor subcontracts any part of this agreement/contract, contractor shall be as fully responsible to the district for acts and omissions of his subcontractor and of persons either directly or indirectly employed by contractor. Nothing contained in these contract documents shall create any contractual relation between any subcontractor and the District.

Construction Subcontractors: Provide name, address, phone number and contractor license number in the following format:

Section III

REFERENCES

Provide information for your three (3) most recent customers for whom your firm provided services similar in scope to those being proposed. The references should be local to the Stockton area. State your role in this project. Provide the name, title, and phone number of an individual at each reference site whom we can contact for information. Inform your references that we may be contacting them to discuss your performance, if you are among those selected for consideration.

Section IV

COSTS AND PRICING

On page titled “**QUOTATION PAGE - PRICING**” enclosed herein, complete all sections, provide all required information and all costs, including all applicable fees, taxes, and surcharges. As stated in the Pricing section, the District is exempt from federal excise taxes. Also, the District does not pay late fees. All pricing offered is to be inclusive of all cutover charges, installation (if applicable), and account set up charges.

Section V

EVIDENCE OF RESPONSIBILITY

Contractors shall submit, with their Bids, all necessary evidence showing their financial resources; experience in the type of work being required by the District; organization available for the performance of the work, and any other required evidence of qualifications to perform. The District may consider such evidence before making its award decision. Failure to submit adequate evidence of Contractor’s responsibility to perform may result in rejection of the Bid.

Section VI

ERATE REQUIREMENTS

As previously stated in RFP Scope, the District intends to obtain maximum funding under the Federal Communications Commission’s E-RATE program for commercially available telecommunication services contracted as a result of this RFP.

The successful Contractor shall be responsible for providing the District on a timely basis the applicable E-RATE documents (such as the Item 21 attachments and any certifications grids or forms) and for providing discounts in accordance with E-RATE program rules and requirements on a timely basis. It is the Contractor’s responsibility to maintain an invoicing and accounting system to track E-RATE discounts in a manner that is readily understandable by the District.

Additionally, in this section of the submitted Bid, Contractors are to detail their proposed methodology for providing the E-RATE discounts on invoices to the District.

All Contractors submitting Bids must provide their E-RATE Service Provider Identification Number (SPIN) in their Bid. Failure to provide the required SPIN may result in the rejection of the offer.

Bidders wishing to obtain information regarding the E-RATE program are directed to access the Schools and Libraries Division of the FCC website at <http://www.sl.universalservice.org>

3. Identification of Contractor

Each Bid must state the full business address of the bidder and must be signed by the bidder with his or her usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with the authority to bind the partnership in such matters.

Bids by corporations must be signed with the legal name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation in this matter. A bidder's failure to properly sign required forms may result in rejection of Bid.

4. Withdrawal of Bids

Bids may be withdrawn by the bidder prior to the time fixed for the opening of Bids, but may not be withdrawn for a period of ninety (90) days after the opening of Bids except in accordance with law. The successful Contractor shall not be relieved of the Bid submitted without the District's consent.

5. Rejection of Bids

The District reserves the right to accept or reject any and all Bids and to waive any irregularities or informalities in the Bids or in the Bid process. The award of the contract, if made by the District, will be to the one of the three lowest responsive and responsible bidders therefore.

6. Amendments

The terms, conditions, specifications and scope of work contained in this Request for Bid may be amended or modified **only with the prior written approval of the District.** Any addenda or bulletins issued, by the District, prior to the opening of the Request for Bid shall form a part of the specifications issued to contractors for the preparation of their Bids and shall constitute a part of the contract documents.

7. Other Documents of Agreement

Contractors submitting Bids that require the District to sign additional contractor agreement documents must submit all such documents in their entirety and in original form with their Bid. Documents not submitted with Bid will not be reviewed or signed by the District and will not constitute a part of this agreement. Furthermore, Contractors shall note on such documents that the District's terms and conditions contained in this document take precedence over conflicting language found in the Contractor's documents.

8. Taxes

For the purposes of this RFP, any applicable taxes, fees or government surcharges shall be itemized separately on the Quotation Page. Federal excise taxes are not applicable to school districts.

9. Bid Negotiations

A Bid to any specific requirement of this Request for Bid with terms such as "negotiable", "will negotiate", or similar, will be considered non-responsive to that specific item and may render the entire Bid non-responsive and subject to rejection.

10. Interpretation or Questions Concerning Documents

If any person submitting a Bid is in doubt as to the true meaning of any part of the specifications or other contract documents, or finds discrepancies in, or omissions from contract documents, he may submit a request for an interpretation or correction thereof by email to:

Nick Lamattina
Purchasing Manager
Stockton Unified School District
e-rate@stocktonusd.net

All questions and inquiries regarding this RFP must be submitted on or before **February 4, 2019**. Questions and answers will be posted on the Stockton USD Purchasing Dept. web page. Any correction of the contract document will be made by Addendum duly issued and a copy of such Addendum will be posted to the district website at <http://www.stocktonusd.net/Domain/155> as well as the USAC EPC Portal Site. In the event that there is a discrepancy between documentation posted in multiple locations, the controlling (master) document will always be located at the district website identified above. Any addenda issued prior to the opening of the Bid, or forming a part of the documents loaned to the Contractor, for the preparation of his Bid, shall be made part of the contract.

11. Contractors Interested in More than One Bid

No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one Bid for the same work unless alternate Bids are specifically called for. A person, firm, or corporation who has submitted a subBid to a bidder, or who has quoted prices of materials to a bidder is not thereby disqualified from submitting a sub-Bid or quoting prices to other bidders. **No person, firm, or corporation shall be allowed to submit a Bid who has participated in the preparation of contract specifications; a Bid by such a person, firm or corporation shall be determined to be nonresponsive.**

12. Method of Award and Evaluation

Method of Award

Each proposal response will be reviewed based on the criteria set forth in this RFP. The selection process for the vendor(s) will include the following evaluation and point assignment/rating criteria:

- **Price of Goods and Services (35 points)**—The District will consider and rate the explanation and detail of rates and fees.
- **Proposed Solution (30 points)**—The District shall assess the soundness of the proposed solution and to what degree has the vendor met or exceeded the requirements herein, especially its interoperability with the existing District Wi-Fi infrastructure.
- **Project Management Approach (PM, implementation, installation) (15 points)**—The District will consider and rate the vendor's project management approach and installation plan.
- **Warranty & Service (10 points)**—The District will consider and rate the quality of the vendor's billing capabilities, account support team, and response time in installation, repair and restoration of service handling and resolution of billing issues/problems.
- **Reference and Vendor Profile (10 points)**—The District shall consider the acceptability and relevance of the vendor's references.

13. Clarification of Bid Response

The District reserves the right to contact any and all firms submitting Bids for the purpose of clarifying any issues related to the Bid submitted. Each Bid must identify one contact person authorized to interpret the Contractor's Bid. This contact person must be available to answer questions via telephone **between 9:00 a.m. and 5:00 p.m. from February 11, 2019 through February 18, 2019** (excluding weekends).

14. Preparation of Bid

Each Bid should be prepared simply and economically, and should provide a straightforward, concise description of the bidder's ability to meet the requirements of the Bid. Bindings, colored displays, promotional material, etc. will receive no evaluation credit. Emphasis should be on completeness and clarity of content.

Cost of preparation of the response to the Request for Bid is solely the responsibility of the contractor. The Stockton Unified School District accepts no liability or responsibility whatsoever for the cost of Bid preparation or presentation.

15. News Releases

News releases pertaining to this RFP or the services, study, data, or project to which it relates will not be made without the prior written approval of the District. No results of the program are to be released without prior written approval of the District.

16. Independent Price Determination

By submission of a Bid, the Contractor certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, that in connection with this Bid:

- A. The prices in the Bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other contractor or with any competitor; and
- B. Unless otherwise required by law, the prices which have been quoted in the Bid have not been knowingly disclosed by the Contractor prior to award directly or indirectly to any other contractor or to any competitor; and
- C. No attempt has been made or will be made by the Contractor to induce any other person or firm to submit or not submit a Bid for the purpose of restricting competition.
- D. Each person signing the Bid certifies that he/she:
 - a. Is the person in the Contractor's organization responsible within that organization for the decision as to the prices being offered in the Bid and has not participated (and will not participate) in any action contrary to 16. A, B, and C above; or
 - b. Is not the person in the Contractor's organization responsible within that organization for the decision as to the prices being offered in the Bid but has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated (and will not participate) in any action contrary to 16 (A), (B), and (C) above.

17. Delivery of Bonds, Certificates, etc.

Unless otherwise specified herein, the successful vendor shall, within fourteen (14) calendar days after notice by the District, sign and deliver all bonds, other than the bid bond, certificates of insurance, and other required documents. In the event the vendor to whom an award is made fails or refuses to deliver such documents, the District may reject the contractor's Bid and may award the contract to the next responsible vendor, or may reject all bids and call for new bids.

18. Bid Submittal

Your Bid MUST BE SUBMITTED in accordance with the following instructions:

SEALED BIDS (BIDS) MUST BE RECEIVED AT THE REQUIRED DISTRICT LOCATION NOT LATER THAN THE TIME AND DATE INDICATED IN THE NOTICE TO BIDDERS OF THIS REQUEST FOR BIDS. Contractors are responsible for assuring that the following identifying information appears on the outside of the sealed envelope:

Reference to "**BID NO. 986**, company or organization name, date due, and the time due. If delivery service is used which prohibits such markings on their envelopes or package, this information must be placed on the outside of an interior envelope or package.

Vendors are requested to assemble their Bid in the following format order:

- District Request for Proposal Package (RFP No. 986) with all pages and issued addendum. All Request for Bid pages requiring signatures, information fill in, pricing, etc. must be completed in full.
- Any additional documents/Bid materials which the contractor deems relevant for the evaluation of their qualifications for this Request for Bid.

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GENERAL CONDITIONS

Article 1. DEFINITIONS

- a. The "District" and "Contractor" are those mentioned as such in the agreement. For convenience and brevity, these terms, as well as terms identifying other persons involved in the contract are treated throughout the contract documents as if they are of singular number and masculine gender.
- b. "Subcontractor," as used herein, includes those having a direct contract with Contractor and one who furnishes material worked to a special design according to plans and specifications of this work, but does not include one who merely furnishes material not so worked.
- c. "Surety" is the person, firm, or corporation, admitted as a California admitted surety, that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works.
- d. "Provide" shall include "provide complete in place," that is, "furnish and install."
- e. Words such as "indicated," "shown," "detailed," "noted," "scheduled," or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of the District's Design Representative and/or Project Manager is intended, unless stated otherwise.
- f. "Work" of the Contractor or subcontractor includes labor or materials or both.
- g. The term "day" as used herein shall mean calendar day unless otherwise specifically designated.
- h. Where the words "equal," "equivalent," "satisfactory," "directed," "designated," "selected," "as required," and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the District's Design Representative is required.
- i. Where the word "required" and words of similar meaning are used, it shall mean, "as required to properly complete the work as required by the District's Design Representative and/or Project Manager," unless stated otherwise.
- j. The word "perform" shall be understood to mean that the Contractor, at Contractor's expense, shall perform all operations necessary to complete the work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.
- k. here the words "acceptable," "acceptance," or words of similar import are used, it shall be understood that the acceptance of the District's Design Representative and District is intended.
- l. Where shown, the words "includes," and "including," do not limit the work to the items following those words.

Article 2. DRAWINGS AND SPECIFICATIONS

- a. **Contract Documents.** Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- b. **Interpretations.** Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, he shall promptly notify the District's Design Representative in writing and any necessary

changes shall be adjusted as provided in contract for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

1. Special Conditions shall take precedence over General Conditions.
2. Technical Specifications implement, in additional detail, the requirements of the General Conditions. In the event of conflict between the Technical Specifications and the General Conditions, the General Conditions shall take precedence unless otherwise directed in writing by the District and/or its representatives including the District's Design Representative and Project Manager.
3. In the event of a conflict between the Technical Specifications and the drawings, the higher quality, higher quantity and most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.
4. With regard to drawings:
 - (a) The higher quality, higher quantity and most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures unless otherwise directed in writing by the District's Design Representative;
 - (b) District's Design Representative's interpretation of drawings shall prevail;
 - (c) Addenda/change order drawings govern over contract drawings;
 - (d) Contract drawings govern over standard drawings.
5. Work not particularly shown or specified shall be the same as similar parts that are shown or specified.
 - (a) Misunderstanding of drawings and specifications shall be clarified by the District's Design Representative, whose decisions shall be final.
 - (b) Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.

Article 3. COPIES FURNISHED

Contractor will be furnished, free of charge, copies of drawings and specifications as set forth in Special Conditions. Additional copies may be obtained at cost of reproduction.

Article 4. OWNERSHIP OF DRAWINGS

All drawings, specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

Article 5. DETAIL DRAWINGS AND INSTRUCTIONS

- a. In case of ambiguity, conflict, or lack of information, District's Design Representative shall furnish with reasonable promptness additional instructions, by means of drawings or otherwise, necessary for proper execution of work. For purposes of this section "reasonable promptness" shall mean as soon as possible in order for Contractor to execute the work. If the item is identified by the Contractor as a critical path item, "reasonable promptness" shall mean no more than five business days. All such drawings and instructions shall be consistent with contract documents, true developments thereof, and reasonably inferable therefrom.
- b. Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions.

Article 6. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. Project shall be commenced on or before the date stated in District's notice to the contractor to proceed and shall be completed by Contractor in the time specified in the Special Conditions. The notice to the contractor to proceed shall not be issued until all contract documents, including the Contract, the necessary original Certificates of Insurance, Endorsements of Insurance, Performance Bond, Payment Bond and all other documentation and certification required by the Contract have been received by the District. The District has stipulated in the Bid Form and the Special Conditions the schedule for contract submittals. The District is under no obligation to consider early completion of the project and the contract completion date shall not be amended by the District's acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances receive additional compensation from the District for indirect, general, administrative or other forms of overhead costs for the period between the time of earlier completion proposed by the Contractor and the official contract completion date. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Special Conditions for each calendar day of delay until work is completed and accepted. Contractor and his surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, District shall have the right to recover the balance from the Contractor or his sureties, who will pay said balance forthwith. Regardless of the time lines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the Project beyond the contractual completion date.
- b. Contractor shall abide by District's determination of what constitutes inclement weather based upon the inspector or geotechnical engineer's recommendation. A bad weather day is a day when the weather causes unsafe work conditions or is unsuitable for work that should not be performed during inclement weather (i.e., exterior finishes). Time extensions shall only be granted when the work that is stopped during inclement weather is on the critical path of the Project schedule. The District's consideration of time extension requests will take into account situations when rain days exceed the normal frequency and amount based on the closest weather station data averaged over the past three years, for the period of this contract and when Contractor can show such rain days impact the critical path. Contractor shall be expected to perform all work he can possibly complete during inclement weather (i.e., interior work).
- c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by it or acts of another Contractor in performance of a contract with District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. Contractor shall within five (5) days of beginning of any such delay (unless District grants a further period of time prior to date of final settlement of the contract) notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. The District's findings of fact thereon shall be final and conclusive on all parties. In case of a continuing cause of delay, only one claim is necessary. Time extensions to the project should be requested by the Contractor as they occur and without delay. Regardless of the time lines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the project beyond the contractual completion date.

- d. **Determining Damages for Delay.** District's liability to Contractor for delays for which District is responsible shall be limited to an extension of time for delays unless such delays were unreasonable under the circumstances involved and were not within the contemplation of the parties when the contract was awarded. Contractor agrees that the District's representative shall determine the actual costs to Contractor of any delay for which Contractor may claim damages from District. Such costs, if any, shall be directly related to the project, and shall not include costs that would be borne by the Contractor in the regular course of business, including, but not limited to, office overhead and ongoing insurance costs. The District shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the judicious handling of forces, equipment, or plant.

Article 7. PROGRESS SCHEDULE

- a. Within ten (10) days after the date of the Award of the Contract, Contractor shall prepare a baseline progress schedule in hard copy and electronic form and shall submit this schedule for the District's approval. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the project within the time specified for completion. The schedule shall include milestones and shall include the "critical path" of delivery, deployment, and hand-off. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the project; the District's approval of the progress schedule does not relieve the Contractor of any such responsibility. Contractor's failure to incorporate all elements of work required for the performance of the contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all work required for a completed project within the specified contract time period, notwithstanding the District's acceptance of the schedule. **The first payment will not be made unless the District has been provided and has accepted the project schedule.**
- b. The schedule shall allow enough time for inclement weather. Such schedule shall indicate graphically the beginning and completion dates of all phases of construction, and shall indicate the critical path for all critical, sequential time related activities. All required schedules shall indicate "float time" for all "slack" or "gaps" in the non-critical activities. Submitted construction schedules shall have a duration which does not exceed the contract time. Excess time may be picked up with "float time" at the discretion of the District. A "bar chart" in reasonably complete detail shall be adequate in contracts over \$1 million and shall show critical path items. All required schedules shall be periodically updated to reflect changes in the status of the job, including weather delays. **At a minimum, the Contractor shall be required to provide and keep updated a monthly schedule in order to prevent delay claims.**

Article 8. CONTRACT SECURITY

Unless otherwise specified in Special Conditions, Contractor shall furnish a surety bond in an amount equal to 100 percent of contract price as security for faithful performance of this contract and shall furnish a separate bond as security for payment of persons performing labor and furnishing materials in connection with this contract. The Payment Bond must be in the amount of 100 percent of the total amount payable. Both the Payment and the Performance Bonds must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish. Aforesaid bonds shall be in form set forth in these contract documents. Upon request of Contractor, District will consider and accept multiple sureties on such bonds.

Article 9. ASSIGNMENT

Contractor shall not assign this contract or any part thereof without prior written consent of District. Any assignment of money due or to become due under this contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under said

contract in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, and/or the Government Code.

Article 10. PROHIBITED INTERESTS

No official of the District and no District representative who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any District's Design Representative structural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of project, shall be or become directly or indirectly interested financially in this contract or in any part thereof. No officer, employee, District's Design Representative, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of project, shall become directly or indirectly interested financially in this contract or in any part thereof.

Article 11. SEPARATE CONTRACTS

District reserves the right to let other contracts in connection with this work or other work at the same site. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate his work with theirs.

If any part of Contractor's work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to District's Design Representative any defects in such work that renders it unsuitable for such proper execution and results. His failure to inspect and report shall constitute his acceptance of other contractor's work as fit and proper for reception of his work, except as to defects which may develop in the other contractor's work after execution of contractor's work.

To insure proper execution of his subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the District's Design Representative any discrepancy between executed work and contract documents.

Contractor shall ascertain to his own satisfaction the scope of the project and nature of any other contracts that have been or may be awarded by District in prosecution of project to the end that Contractor may perform this contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on project. If simultaneous execution of any contract for project is likely to cause interference with performance of some other contract or contracts, District shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. District shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

Article 12. SUBCONTRACTING

- a. Contractor agrees to bind every subcontractor by terms of the contract as far as such terms are applicable to subcontractor's work. If Contractor subcontracts any part of this contract, Contractor shall be as fully responsible to District for the acts and omissions of his subcontractor and of persons either directly or indirectly employed by his subcontractor, as

he is for acts and omissions of persons directly employed by himself. Nothing contained in these contract documents shall create any contractual relation between any subcontractor and District. The District shall be deemed to be the third party beneficiary of the contract between the contractor and the subcontractor.

- b. District's consent to or approval of any subcontractor under this contract shall not in any way relieve Contractor of his obligations under this contract and no such consent or approval shall be deemed to waive any provision of this contract. The District reserves the right of approval of all subcontractors proposed for use on this Project, and to this end, may require financial, performance and such additional information as is needed to secure this approval. If a Subcontractor is not approved, the Contractor shall promptly submit another of the same trade for approval.
- c. Substitution or addition of subcontractors shall be permitted only as authorized in chapter 4 (commencing at section 4100), part 1, division 2 of the California Public Contract Code.

Article 13. DISTRICT'S RIGHT TO TERMINATE CONTRACT

District may, without prejudice to any other right or remedy, serve written notice of intent to terminate upon Contractor and his surety stating its intention to terminate this contract if the District fails to receive applied-for Erate or CTF discounts, for whatever reason, including the cessation or modification of the Erate or CTF programs in ways the District determines are not beneficial to the District or if the Contractor (i) refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said work within such time, or (iii) if the Contractor should file a bankruptcy petition, or (iv) if he should make a general assignment for the benefit of his creditors, or (v) if a receiver should be appointed on account of his insolvency, or (vi) if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or (vii) if he should fail to make prompt payment to subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of District, or (ix) otherwise be guilty of a substantial violation of any provision of the contract, or (x) if he or his subcontractors should violate any of the provisions of this contract. The notice of intent to terminate shall state generally the reasons for such intention to terminate. Unless within five days (5) days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this contract shall be deemed to have ceased and terminated. The Contractor then shall not be entitled to receive any further payment until work is finished. Upon the termination of the contract as provided above, District shall immediately serve upon surety and contractor written notice of termination stating that the contract has ceased and terminated. Surety shall have the right to investigate, take over and perform this contract, provided, however, that if surety, within five (5) days after service upon it of said notice of termination, does not give District written notice of its intention to take over and perform this contract and does not commence performance thereof within seven (7) days from the date of service upon it of such notice of termination, District may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. If Surety does not perform the project work itself, the Surety shall consult with the District regarding its planned choice of a contractor or contractors to complete the project, and upon request by District, Surety shall provide District Evidence of Responsibility of Surety's proposed contractor or contractors. District shall be entitled to reject Surety's choice of contractor or contractors if District determines in its sole discretion that the contractor or contractors are nonresponsible. If Surety provides District written notice of its intention to take over and perform this contract, within fourteen (14) days of such written notice of intent to take over and perform, Surety or its chosen contractor or contractors (if such contractor or contractor's are approved by District) shall provide District a detailed Progress Schedule as specified in Article 7 above. Contractor and his surety shall be liable to District for any excess cost or other damages

occasioned the District as a result of Surety or Surety's contractor or contractors takeover and performance. If the District takes over the work as hereinabove provided, the District may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

If the unpaid balance of the contract price exceeds the expense of finishing work, including compensation for additional District's Design Representative, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to District. Expense incurred by District as herein provided, and damage incurred through Contractor's default, shall be certified by District's Design Representative and/or Project Manager.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

Notwithstanding the foregoing provisions, this contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the contract pursuant to 11 U.S.C. section 365 (Federal Bankruptcy Act).

Article 14. GUARANTEE

Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by District. Contractor shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one-year period from date of acceptance without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

In the event of failure of Contractor to comply with above-mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor. Contractor hereby agrees to pay costs and charges therefore immediately on demand.

If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District or to prevent interruption of operations of the District, the District will attempt to give the notice required by this article. If the Contractor cannot be contacted or does not comply with the District's request for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this article, proceed to make such correction or provide such attention. The costs of such correction or attention shall be charged against the Contractor. Such action by the District will not relieve the Contractor of the guarantees provided in this article or elsewhere in this contract.

This article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District with all appropriate guarantee or warranty certificates upon completion of the project.

Article 15. NOTICE AND SERVICE THEREOF

- a. Any notice from one party to the other under the contract shall be in writing and shall be dated and signed by party giving such notice or by the duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:
 1. If notice is given to District, by personal delivery thereof to District's representative, District's Design Representative, or Project Manager or by depositing same in United States mail, enclosed in a sealed envelope addressed to District for attention of said representative, District's Design Representative or Project Manager, postage prepaid and registered;
 2. If notice is given to Contractor, by personal delivery thereof to said Contractor or to his foreman at site of project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this contract, postage prepaid and registered;
 3. If notice is given to surety or other person, by personal delivery to such surety or other person or by depositing same in United States mail, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to party giving notice, postage prepaid and registered.
 4. If notice is served by mail, it shall be deemed received and all time periods associated with the giving of notice shall run from the third day after mailing.

Article 16. WORKERS

- a. Contractor shall at all times enforce strict discipline and good order among his employees. Contractor shall not employ on work any unfit person or any one not skilled in work assigned to him.
- b. Any person in the employ of the Contractor whom District may deem incompetent or unfit shall be dismissed from work and shall not again be employed on the project except with the written consent of District.

Article 17. WAGE RATES, PAYROLL RECORDS AND DEBARMENT

- a. The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the District's Facilities Department. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws and/or the District's LCP.

- b. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- c. As a further material part of this Contract, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.
- d. Accurate payroll records shall be kept by the contractor and each subcontractor, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- e. It shall be the responsibility of Contractor to Comply with Labor Code section 1776 as it may be amended by the Legislature from time to time with respect to each payroll record. As of April, 2003, Labor Code section 1776 provides in relevant part:

"(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fee and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section."

- f. Debarment. The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

Article 18. APPRENTICES

Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. The Contractor shall be knowledgeable of and comply with all California Labor Code sections including 1727, 1773.5, 1775, 1777, 1777.5, 1810, 1813, 1860, including all amendments; each of these sections is incorporated by reference into this Contract. The responsibility for compliance with these provisions for all apprentice able occupations rests with the Contractor. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

Article 19. HOURS OF WORK

- a. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this contract upon the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- b. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- c. The Contractor shall pay to the District a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.
- d. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District.

Article 20. WORKERS' COMPENSATION INSURANCE

- a. The Contractor shall provide, during the life of this contract, workers' compensation insurance for all of his employees engaged in work under this contract, on or at the site of the project, and, in case any of his work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this contract, on or at the site of the project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his insurance protecting workers.
- b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.
 - 1. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:
 - (a) The Voluntary Compensation Endorsement; and
 - (b) Broad Form All States Endorsement; and
 - (c) The Longshoremen's and Harbor Workers endorsement, where applicable to the work under this contract; and
 - (d) Waiver of Subrogation Endorsement.

Article 21. COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE

- a. Contractor shall procure and maintain during the life of this contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect Contractor and District from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this article, and shall be in the form and amounts as set forth in the Special Conditions hereof. The limits set forth in the Special Conditions shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to District, and shall not preclude the District from taking such other actions available to District under other provisions of the contract documents or law.
- b. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.
- c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.
- d. Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's board of trustees, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, the Project Manager, the Project Manager's consultants, the District's Design Representative, and the District's Design Representative's consultants, individually and collectively, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed

operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.

- e. The coverage afforded by the additional insured endorsement described in paragraph d above, shall apply as primary insurance, and any other insurance maintained by District, the members of District's Board of Trustees, or its officers, agents, employees and volunteers, or any self-funded program of District, shall be in excess only and not contributing with such coverage.
- f. Contractor shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of \$25,000. District may approve higher retention amounts, based upon review of documentation submitted by Contractor. Such review shall take into consideration Contractor's net worth and reserves for payment of claims of liability against Contractor, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.
- g. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in Article 24 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, District may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage described in paragraphs d and e, above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.
- h. Contractor and District release each other, and their respective authorized representatives, from any Claims (as defined in Article 24 hereof), but only to the extent that the proceeds received from any policy of liability insurance carried by District or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Contractor hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.
- i. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - 1. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
 - 2. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insureds.
 - 3. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Agreement.
 - 4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- j. Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments

required by such insurance, shall constitute a material breach of the contract, and District may, at its option, terminate the Agreement for any such default by Contractor.

- k. The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by the Contractor, and any approval of said insurance by the District or its insurance advisor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.
- l. District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.
- m. All deviations from the contractual insurance requirements stated herein must be approved in writing by District's risk manager.

Article 22. BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE (Not Applicable to this Project)

- a. It is the Contractor's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. District accepts no responsibility until the contract is formally accepted by the Governing Board for the work. The Contractor is required to file with the District a certificate evidencing builder's risk or applicable installation of not less than the amount identified in the special conditions insurance coverage.
- b. Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.
 - 1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the contract.
 - 2. Coverage shall include all materials stored on site and in transit.
 - 3. Coverage shall include Contractor's tools and equipment.
 - 4. Insurance shall include boiler, machinery and material hoist coverage.
- c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

Article 23. PROOF OF CARRIAGE OF INSURANCE

- a. Contractor shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Agreement, deliver to District certificates of insurance evidencing the same, together with appropriate separate endorsements thereto, evidencing that Contractor has obtained such coverage for the period of the Agreement. Contractor shall deliver certified copies of the actual insurance policies specified herein, within thirty days after commencement of work. Thereafter, copies of renewal policies, or certificates and appropriate separate endorsements thereof, shall be delivered to District within thirty (30) days prior to the expiration of the term of any policy required herein. Contractor shall permit District at all reasonable times to inspect any policies of insurance of Contractor which Contractor has not delivered to District.
- b. Certificates and insurance policies shall include the following clause:

"This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District stating date of cancellation, reduction or other adverse change respecting such insurance. The date of cancellation, reduction or adverse change may not be less than thirty (30) days after date of mailing notice."

Any notice required to be sent pursuant to this section shall be to District's address as shown in the Notice to Contractors Calling for Bids.

- c. Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice. All Certificates of Insurance provided by Contractor shall name District, the Project Manager, the Project Manager's consultants, the District's Design Representative, and District's Design Representative's consultants as additional insureds.
- d. After receiving written Notice of Cancellation of Insurance, Contractor shall have ten (10) days to provide other policies of insurance similar to the canceled policies and acceptable insurance. If such replacement coverage is not provided, the District may secure insurance at the Contractor's expense.
- e. Nothing contained in the insurance requirements shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from operations under this agreement.

Article 24. INDEMNIFICATION

District shall not be liable for, and Contractor shall defend and indemnify District to the fullest extent permitted by law against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees, expert witness fees, Erate USAC Commitment Adjustment (COMAD), investigation costs and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this contract arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, sole negligence, or willful misconduct of District or its agents or employees.

Article 25. LAWS AND REGULATIONS

- a. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify District's Design Representative or Project Manager in writing and any necessary changes shall be adjusted as provided in contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to District's Design Representative or Project Manager, he shall bear all costs arising therefrom.
- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

Article 26. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of work shall be secured and paid for by Contractor, unless otherwise specified.

Article 27. INSPECTION FEES FOR PERMANENT UTILITIES

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees.

Article 28. EASEMENTS

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by District, unless otherwise specified.

Article 29. SURVEYS

Surveys to determine location of property lines and corners will be supplied by District. Surveys to determine locations of construction, MILLWORK, and site work shall be provided by Contractor.

Article 30. EXCISE TAXES

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any bid price.

Article 31. PATENTS, ROYALTIES, AND INDEMNITIES

The Contractor shall hold and save the District and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this contract, including its use by the District, unless otherwise specifically stipulated in the contract documents.

Article 32. MATERIALS

- a. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendency, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this contract within specified time.
- b. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract.

- d. No materials, supplies, or equipment for work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to District free from any claims, liens, or charges. He further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any work covered by this contract shall have any right to lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof. Nothing contained in this article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

Article 33. SUBSTITUTIONS

- a. Whenever in specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article which shall be substantially equal or better in every respect to that so indicated or specified. Any material, process, or article not exactly meeting the specifications in the documents in every respect shall be considered a substitution. If a material, process, or article offered by Contractor is not, in opinion of District's Design Representative, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified. Burden of proof as to equality of any material, process, or article shall rest with Contractor.
- b. In accordance with Public Contract Code section 3400 "prior to or after the award of the contract", district must provide for "submission of data substantiating a request for a substitution of 'an equal' item." Therefore, **no later than 8 (eight) calendar days prior** to award of the contract, if the Contractor is requesting substitution of "an equal" item or product or work, the make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "or equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted item or product or work is equivalent to the specified item or product or work in every way except as listed on the affidavit. Whenever possible, the same substitution information is to be included in the sealed bid submittal package. Failure to submit all the needed substantiating data, including the signed affidavit, may result in a determination that the bid is nonresponsive. **BIDDERS ARE SPECIFICALLY NOTIFIED THAT THE SUBMISSION OF THIS DOCUMENTATION IN NO WAY OBLIGATES THE DISTRICT OR ITS REPRESENTATIVE TO REVIEW SUCH DOCUMENTATION PRIOR TO CONTRACT AWARD. FURTHERMORE, IF A PROPOSED SUBSTITUTION IS REJECTED, BIDDER SHALL BE RESPONSIBLE TO PROVIDE THE ITEM OR PRODUCT OR WORK AS**

ORIGINALLY SPECIFIED. DISTRICT HAS THE COMPLETE AND SOLE DISCRETION TO DETERMINE IF AN ITEM OR ARTICLE IS AN EQUAL ITEM.

- c. After award of the contract should the District determine in its sole discretion that substitution of an item or product is reasonable and necessary or reasonable and appropriate, the Contractor shall submit any substitution requests together with all data required to substantiate that the substituted product or item is an "or equal" to the specified product or item. The make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item, product or work and substantiates that it is an "or equal" to the specified item, product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted product is equivalent to the specified product or item in every way except as listed on the affidavit. Failure to submit all the needed substantiating data, including the signed affidavit, to the District Representative or District's Design Representative in a timely fashion so that the substitution can be adequately reviewed and considered prior to any necessity for its use or application may result in the rejection of the proposed substitution. The District Representative or District's Design Representative is not obligated to review multiple substitution submittals for the same product or item due to the Contractor's failure to submit a complete package either at time of submission of bid documents or in a timely manner after award of contract.
- d. In event Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

Article 34. SHOP DRAWINGS

- a. Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in his own work or in that of any other contractor, subcontractor, District's Design Representative, other independent contractor or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to District's Design Representative. Each signed submittal shall affirm that the submittal meets all the requirements of the contract documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- b. Contractor shall advise District immediately, if District's Design Representative has not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of project and compliance with information given in contract documents. Contractor shall make any corrections required by District's Design Representative, file with him three (3) corrected copies, and furnish such other copies as may be needed for construction. District's Design Representative's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless he has in writing called District's Design Representative's attention to such deviations at time of submission and has secured his written approval. District's Design Representative's approval of such drawings and schedules also shall not relieve contractor from responsibility for errors in shop drawings or schedules. For purposes of this section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing

sufficient time in the District's Design Representative's professional judgment to permit adequate review.

Article 35. SUBMITTALS

- a. Contractor shall furnish for approval, within fourteen (14) days following award of contract a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in specifications. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this contract.
- b. Contractor will provide samples and submittals, together with catalogs and supporting data required by District's Design Representative within a reasonable time period so as not to cause delays on the project.
- c. This provision shall not authorize any extension of time for performance of this contract. District's Design Representative will check and approve such samples, only for conformance with design concept of work and for compliance with information given in contract documents. Work shall be in accordance with approved samples. District's Design Representative's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in the District's Design Representative's professional judgment fourteen days is an insufficient amount of time to permit adequate review, District's Design Representative shall, within the initial fourteen (14) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.
- d. If the District's Design Representative's response results in a change in the project, then such change shall be effected by a written change order.

Article 36. CLOSEOUT SUBMITTALS

- a. The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the technical specifications. The final payment will not be made until the District representative has had an opportunity to review and accept the required documents.

Article 37. COST BREAKDOWN AND PERIODICAL ESTIMATES

- a. Contractor shall furnish on forms approved by District:
 1. Within ten (10) calendar days of award of contract a detailed estimate giving a complete breakdown of contract price; and
 2. A periodical itemized estimate of work done for the purpose of making partial payments thereon;
 3. Within ten (10) calendar days of request by District, a schedule of estimated monthly payments which shall be due him under the contract.
- b. Values employed in making up any of these schedules will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from contract price.

Article 38. PAYMENTS AND RETENTION

- a. Each month as soon as practicable after receipt of approved periodical estimate for partial payment, but in order to avoid the payment of interest, in any event within thirty (30) days of receipt of such periodical estimate, there shall be paid to Contractor a sum equal to ninety

percent (90%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Upon receipt of a payment request the Project Manager shall within ten (10) calendar days determine whether the payment request is proper. If the request is determined not to be a proper payment request suitable for payment, it shall be returned to the Contractor as soon as practicable within ten (10) calendar days after receipt and shall be accompanied by a statement in writing as to the reasons why the payment request is not proper. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this contract and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning work, or any portion thereof given by the District or Project Manager shall remain uncomplished with.

- b. The final payment of ten percent (10%) of the value of work done under this contract, if unencumbered, shall be made within sixty (60) days after the date of completion of the work, provided however, that in the event of a dispute between the District and the Contractor, the District may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Completion means any of the following as provided by Public Contract Code section 7107:
 1. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
 2. The acceptance by the public agency, or its agent, of the work of improvement.
 3. For purposes of this contract, the acceptance by the District means acceptance made only by an action of the governing body of District in session or its designee. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against District arising from this contract.
 4. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the Contractor.
 5. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.
- c. This contract is subject to the provisions of Public Contract Code section 7107.
- d. At any time after fifty percent (50%) of the work has been completed, if the District, by action of its governing body, finds that satisfactory progress is being made, District may make any of the remaining payments in full for actual work completed or may withhold any amount up to ten percent (10%) thereof as District may find appropriate based on the Contractor's progress.
- e. Whenever any part of the work is in a condition suitable for use, and the best interest of the District requires such use, the District may take possession of, connect to, open for public use, or use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at District's expense. The use by the District as contemplated in this section shall in no case be construed as constituting acceptance of the work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the

Contract nor act as a waiver by the District of any of the conditions thereof. Contractor shall continue to maintain all insurance, including Builder's Risk insurance, on the project.

ARTICLE 39. PAYMENTS WITHHELD

- a. In addition to amounts which District may retain under any and all other articles in this contract including those entitled "Payments," and "Time for Completion and Liquidated Damages," District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in the Project Manager's judgment may be necessary to cover:
 1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the project under this contract.
 2. Defective work not remedied.
 3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.
 4. Completion of contract if there exists a reasonable doubt that contract can be completed for balance then unpaid.
 5. Damage to another Contractor.
 6. Amounts which may be due District for just claims against Contractor.
 7. Failure of Contractor to keep the record ("as-built") drawings up to date.
 8. Failure to provide update on construction schedule as required by Article 7 hereof.
 9. Failure to provide timely Erate or CTF discounts in a manner that is readily understandable the the District.
- b. District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment made under contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

Article 40. CHANGES AND EXTRA WORK

- a. **Changes in Work.** District, without invalidating contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the contract sum being adjusted accordingly. All such work shall be subject to prevailing wage rates and shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.
- b. In giving instructions, Contractor agrees that District's Design Representative or Project Manager shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the purposes or approvals of the project. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order from District, and no claim for an addition to the contract sum shall be valid unless so ordered.
- c. **Unforeseen Conditions.** Contractor shall provide District with notice of unforeseen conditions immediately upon discovery of such conditions.

- d. Value of any such extra work, change, or deduction shall be determined at the discretion of District in one or more of the following ways:
1. By acceptable lump sum Bid from Contractor with itemization as required by District.
 2. By unit prices contained in Contractor's original bid and incorporated in contract documents or fixed by subsequent agreement between District and Contractor.
 3. By the cost of material and labor and a percentage for overhead and profit. The following form shall be followed as applicable for additions and deductions to contract:

	EXTRA/ (CREDIT)
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____
(b) Labor (attach itemized hours and base rates from identified prevailing wage schedules)	_____
(c) General Liability and Builder's Risk Insurance, Workers' Compensation Insurance, Social Security, Pension and Unemployment Taxes at actual and verified cost. _____	_____
(d) Subtotal	_____
(e) Subcontractor's overhead and profit not to exceed 10% of Item (d)	_____
(f) Subtotal	_____
(g) General Contractor's Overhead and Profit, including extended home office overhead, not to exceed 10% of Item (d)	_____
(h) Subtotal	_____
(i) Bond Premium, not to exceed 1% of Item (h)	_____
(j) Total	=====

- e. Regardless of whether the cost of the change order is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back an appropriate and reasonable overhead mark-up and the bonding mark up for deleted items. In addition, in no circumstance shall contractor be entitled to subcontractor's overhead costs or mark-up where work is performed by Contractor's own forces.
- f. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the contract; or (iii) constitutes a waiver of any provision in the contract, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN FIVE (5) WORKING DAYS FROM THE DATE

CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such five (5) working day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this article. In the event of a dispute as to any work to be performed, the District has the right to direct the Contractor to continue to proceed with work as directed, and the Contractor is obligated to continue performance of work and advise District of its concerns in writing in accordance with the provisions of this subsection f. The procedure for consideration shall be as stated above in this article.

- g. In the event a mutual agreement cannot be reached on the cost of a change order, Contractor and District agree that an industry estimating guide, such as an estimating guide published by Means, shall be used to determine the cost of a disputed change order item.
- h. All costs associated with the change are to be included in the change order Bid to the District. Costs may be in terms of time, money or both.

Article 41. DEDUCTIONS FOR UNCORRECTED WORK

If District deems it inexpedient to correct work injured or not done in accordance with contract, an equitable deduction from contract price shall be made therefore.

Article 42. PAYMENTS BY CONTRACTOR

Contractor shall pay:

- a. For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered,
- b. For all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at site of project and balance of cost thereof not later than the 30th day following completion of that part of work in or on which such materials, tools, and equipment are incorporated or used, and
- c. To each of his subcontractors, not later than the 5th day following each payment to Contractor, the respective amounts allowed Contractor on account of work performed by respective subcontractor to the extent of such subcontractor's interest therein.

Article 43. CONTRACTOR'S SUPERVISION

- a. Unless personally present on the premises where work is being done, Contractor shall keep on the work, during its progress, a competent full-time job (project) superintendent satisfactory to District. The job superintendent shall not be changed except with the written consent of District unless the job superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. The job superintendent shall represent Contractor in his absence and all directions given to him shall be as binding as if given to Contractor. Other directions shall be so confirmed on written request in each case.
- b. Contractor shall give efficient supervision to work, using his best skill and attention to control safety and job coordination. He shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to District's Design Representative or Project

Manager any error, inconsistency or omission which he may discover. The Contractor shall not be liable to District for any damage resulting from errors or deficiencies in the contract documents or other instructions by the District's Design Representative.

Article 44. INSPECTOR'S FIELD OFFICE

- a. Not Required.

Article 45. DOCUMENTS ON WORK

- a. Contractor shall keep one copy of all contract documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24 of the California Code of Regulations, and the prevailing wage rates applicable at the time of the contract, which are a part of contract documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, the Project Manager, the Project Manager's representative, District's Design Representative and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21 and 24 as they relate to this project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this project, particularly Titles 17, 19, 21 and 24.)
- b. Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.

Article 46. RECORD ("AS BUILT") DRAWINGS

- a. Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade to do its own as-builts. The trade as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or District's Design Representative. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work.
- b. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set.
- c. At the end of the project, the Contractor shall provide the district representative with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or District's Design Representative. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

Article 47. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary distribution systems.
- b. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the project.
- c. All permanent meters installed shall be listed in the Contractor's name until completion occurs, as defined in Article 6 hereof, at which time further pro-rating will be determined if necessary. When District begins using the project, charges over and above power actually used for construction will be the responsibility of the District.
- d. If contract is for construction in existing facilities, Contractor may, with written permission of District, use District's existing utilities by making prearranged payments to District for utilities used by Contractor for construction.

Article 48. SANITARY FACILITIES

The District will make arrangements with the Contractor to provide sanitary facilities to workers when practicable. Contractor shall provide a temporary sanitary building, if district determines that use of toilet facilities at the site would conflict with Education Code sections 45125.1 and 45125.2 regarding contact with students on school premises. Use of toilet facilities in the work site shall not be permitted except by approval of the district or its representative.

Article 49. TRENCHES

If the contract price exceeds \$25,000, the Contractor shall submit to the District or a registered civil or structural engineer employed by the District, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation of such trench or trenches shall be commenced until said plan has been accepted by District or the person to whom authority to accept has been delegated by District.

Article 50. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of this contract. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and contract documents. Contractor shall take all necessary precautions for the safety of employees on the project and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of his organization on the work, whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to District by Contractor.

- b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District's Design Representative, Project Manager, or District, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by District's Design Representative or District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- c. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- d. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. Contractor shall:
 - 1. Enclose working area with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities, and perform work which may interfere with school routine before or after school hours. (This subsection applies to new construction on existing sites.)
 - 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - 3. Deliver materials to the building area over a route designated by Project Manager.
 - 4. When directed by District, take preventive measures to eliminate objectionable dust.
 - 5. Confine Contractor's apparatus, the storage of materials, and the operations of his workers to limits indicated by law, ordinances, permits, or directions of Project Manager. Contractor shall not unreasonably encumber premises with his materials. Contractor shall enforce all instructions of District and District's Design Representative regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on construction site.
 - 6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, licensed in the State of California, at no cost to the District.

Article 51. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at his expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and approved by the District's Design Representative. Any required "as-built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the District's Design Representative.

Article 52. REMOVAL OF HAZARDOUS MATERIALS

- a. Since removal and/or abatement of asbestos, PCBs and other toxic wastes and hazardous materials is a specialized field of work with specialized insurance requirements, unless otherwise specified in the contract documents, district shall contract directly for such specialized services, if required, and shall not require the Contractor to subcontract for such services.
- b. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall

immediately stop work in the area affected and report the condition to the District, inspector, Project Manager, and District's Design Representative in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the District and Contractor, or by arbitration under Article 71 hereof.

Article 53. CUTTING AND PATCHING

- a. Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as the Project Manager may direct.
- b. All cost caused by defective or ill-timed work shall be borne by party responsible therefore.
- c. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of Project Manager.

Article 54. CLEANING UP

Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by this work. Contractor shall not leave debris under, in, or about the premises. Upon completion of work, Contractor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. See Special Conditions for additional requirements and instructions.

Article 55. CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Contractor shall promptly remove from the premises all work condemned by District as failing to conform to the contract, whether incorporated or not. Contractor shall promptly replace and re-execute his own work to comply with contract documents without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- b. If Contractor does not remove such condemned work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

Article 56. ACCESS TO WORK

District and its representatives at all times shall have access to work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions under contract.

Article 57. OCCUPANCY

District reserves the right to occupy buildings at any time before completion, and such occupancy shall not constitute final acceptance of any part of work covered by this contract.

Article 58. DISTRICT'S INSPECTOR

a. If applicable, an inspector will be employed by District in accordance with requirements of Title 24 of the California Code of Regulations and will be assigned to the work. His duties are specifically defined in Part 1, Title 24, Section 4-342 of the California Code of Regulations.

b. All work shall be under the observation of said inspector. He shall have free access to any or all parts of work at any time. Contractor shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve Contractor from any obligation to fulfill this contract. Inspector or Project Manager shall have authority to stop work whenever the provisions of the contract documents are not being complied with and Contractor shall instruct his employees accordingly.

Article 59. TESTS AND INSPECTIONS

a. If contract, District's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection **at least two (2) working days prior to being tested or covered up**. If inspection is by a public authority other than District, Contractor shall inform District of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by District shall be promptly made and where practicable at source of supply. If any work should be covered up without approval or consent of District, it must, if required by District, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with the contract. Costs for testing and inspection shall be paid by District. Costs of tests of any materials found not to be in compliance with the contract shall be paid by the Contractor.

b. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or District's representative, and not by Contractor.

c. In advance of manufacture of materials to be supplied by Contractor under the contract, which by the terms of the contract must be tested, Contractor shall notify District in advance so that District may arrange for testing of same at the source of supply. Any materials shipped by Contractor from the source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from District's representative that such testing and inspection will not be required, shall not be incorporated into the work without the prior approval of District and subsequent testing and inspection.

d. Re-examination of questioned work may be ordered by District. If so ordered, work must be uncovered by Contractor. If such work is found to be in accordance with the contract documents, District shall pay the costs of re-examination and replacement. If such work be found not to be in accordance with the contract documents, Contractor shall pay such costs.

Article 60. SOILS INVESTIGATION REPORT

Except as provided in Article 68, (unless otherwise specifically provided) when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this contract. Nevertheless, with respect to any such soils investigation and/or geotechnical

report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests he deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District, Project Manager, or District's Design Representative that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the contract documents for performance of the Work, such reference shall be to establish minimum requirements only. Further, no representation is made by District, Project Manager, or District's Design Representative that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Work shall be governed by provisions of the General Conditions of the Contract for unforeseen conditions.

Article 61. DISTRICT'S DESIGN REPRESENTATIVE'S AND PROJECT MANAGER'S STATUS

- a. In general and where appropriate and applicable, the District's Design Representative and Project Manager shall be the District's representatives during the construction period and shall observe the progress and quality of the work on behalf of the District. They shall have the authority to act on behalf of District only to the extent expressly provided in the contract documents. After consultation with the Inspector and after using his best efforts to consult with the District, the District's Design Representative or Project Manager shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the contract.
- b. Contractor further acknowledges that the District's Design Representative and/or the Project Manager shall be, in the first instance, the judge of the performance of this contract.

Article 62. DISTRICT'S DESIGN REPRESENTATIVE'S AND PROJECT MANAGER'S DECISIONS

Contractor shall promptly notify District in writing if the District's Design Representative and/or the Project Manager fails within a reasonable time, to make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the work.

Article 63. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not

correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

Article 64. LABOR/EMPLOYMENT SAFETY

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

Article 65. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

Article 66. ASSIGNMENT OF ANTITRUST ACTIONS

Contractor or subcontractor offers and agrees to assign to District all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 USC, section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this contract or any subcontract. This assignment shall be made and become effective at the time District tenders final payment to the Contractor, without further acknowledgment by the parties.

Article 67. SUBSTITUTION OF SECURITY

- a. Upon the Contractor's request, the District will make payment of funds withheld from progress payments to ensure performance under the contract pursuant to the requirements of Public Contract Code section 22300 if the Contractor deposits in escrow with the District or with a bank acceptable to the District, securities eligible for investment under Government Code section 16430, bank or savings and loan certificates of deposit, or other security mutually agreed to by the Contractor and the District, subject to the following conditions:
 1. The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.
 2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the Contractor pursuant to this section.
 3. The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:
 - (a) The amount of securities to be deposited,
 - (b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
 - (c) Conversion to cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract,
 - (d) Decrease in value of securities on deposit,
 - (e) The termination of the escrow upon completion of the contract.

4. The Contractor shall obtain the written consent of the surety to such agreement.
5. As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

Article 68. EXCAVATIONS DEEPER THAN FOUR FEET

If this contract involves digging trenches or other excavations that extend deeper than four feet below the surface, then all of the following shall apply:

- a. The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
 1. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the site differing from those indicated.
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- b. Upon receiving any such notice, the District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work District shall issue a change order under the procedures described in this contract.
- c. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by this contract, but shall proceed with all work to be performed under the contract. A contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties. (Public Contract Code section 7104).

Article 69. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- a. Local Agency Requirements. The Prime Contractor shall, as necessary in connection with the Work, comply with the applicable requirements of the County, any drainage or storm water district, or other local agency with jurisdiction in regard to discharges of storm water to storm-drain systems or watercourses, including, without limitation, requirements of applicable municipal storm water management programs. It is the Prime Contractor's obligation to ascertain the NPDES and SWPPP requirements, but the Construction Manager may provide assistance.
- b. NPDES Permit Requirements. The Prime Contractor shall, as necessary in connection with the Work, comply with all requirements of any applicable National Pollutant Discharge Elimination System ("NPDES") permit and Storm Water Pollution Prevention Plan ("SWPPP"). It is the Prime Contractor's obligation to ascertain the NPDES and SWPPP requirements, but the Construction Manager may provide assistance. The Prime Contractor shall not disturb any on-site or off-site run-off control measures in place for the Project, and shall replace and/or restore any such control measures damaged in connection with the Work being performed on

behalf of the Prime Contractor, as required by the Construction Manager. Failure to comply with the NPDES permit or the SWPPP is a violation of federal and/or State law. The Prime Contractor shall indemnify, defend and hold-harmless each District Indemnitee, in accordance with the Contract Documents, with respect to any noncompliance with the NPDES permit or the SWPPP.

- c. Responsibility for NPDES Permit and SWPPP. If this Subsection 13.12.3 is made applicable as set forth in the Special Conditions, the Prime Contractor shall be responsible for filing a "Notice of Intent" and obtaining coverage under the applicable NPDES permit for the Project, and for preparing, obtaining approvals of, implementing and monitoring a SWPPP for the Project. The Prime Contractor shall provide a draft of the SWPPP to the District as soon as practicable after execution of the Contract, which shall be subject to review by the Construction Manager.
4. The Prime Contractor shall be required to comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Prime Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Prime Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") prior to initiating Work. In bidding on this Contract, it shall be the Prime Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Prime Contractor shall comply with all requirements of the State Water Resources Control Board. The Prime Contractor shall include all costs of compliance with specified requirements in the Contract amount.
5. The Prime Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit and the SWPPP. Prime Contractor shall provide copies of all reports and monitoring information to the District Representative, District's Design Representative, and Construction Manager. The Prime Contractor shall provide to the District a copy of the NPDES permit (and all supporting rules and orders) and, after final approval, a copy of the SWPPP. The Prime Contractor shall implement and comply with all provisions of the NPDES permit, the SWPPP and other requirements of the State Water Resources Control Board in connection with the Work, including, without limitation, the standard provisions, monitoring and reporting requirements as required by NPDES permit.
6. The Prime Contractor shall comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
7. Storm, surface, nuisance, or other waters may be encountered at various times during construction of the work. Therefore, the Prime Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
8. Failure to comply with the Permit is in violation of federal and state law. The Prime Contractor hereby agrees to indemnify and hold harmless District, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officials, officers,

agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its officials, officers, agents, employees or authorized volunteers. District may seek damages from the Prime Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by the Prime Contractor's failure to comply with the Permit.

9. The Prime Contractor shall be responsible for removal and clean-up of all run-off and other control measures upon completion of the Work.

Article 70. RESOLUTION OF CONSTRUCTION CLAIMS OF \$375,000 OR LESS

- a. For public work claims of \$375,000 or less between Contractor and District, if District has not elected to resolve disputes by arbitration pursuant to article 7.1 (commencing with section 10240) of chapter 1 of part 2 of the Public Contract Code, the provisions of article 1.5 (commencing with section 20104) of chapter 1 of part 3 of the Public Contract Code apply ("Article 1.5").
- b. For purposes of Article 1.5, "public work" has the same meaning as in sections 3100 and 3106 of the Civil Code. "Claims" means a separate demand by Contractor for a time extension, or payment of money or damages for work done by or for Contractor, payment for which is not otherwise expressly provided in the contract or to which Contractor would not otherwise be entitled, or a payment disputed by District.
- c. Each claim shall be submitted in writing before the date of final payment and shall include all necessary substantiating documentation. District shall respond in writing within forty-five (45) days of receipt of the claim if the claim is less than \$50,000 ("\$50,000 claim") or within sixty (60) days of receipt of the claim, if the claim is over \$50,000 but less than or equal to \$375,000 ("\$50,000-\$375,000 claim"). In either case, District may request in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the claimant. Any additional information shall be requested and provided upon mutual agreement of the District and the claimant. District's written response to the claim shall be submitted to claimant within fifteen (15) days after receipt of the further documentation for \$50,000 claims or within thirty (30) days after receipt of the further documentation for \$50,000-\$375,000 claims or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- d. Within fifteen (15) days of receipt of the District's response, if claimant disputes District's written response or within fifteen (15) days of the District's failure to respond within the time prescribed, the claimant shall provide written notification to District demanding an informal conference to meet and confer ("conference") to be scheduled by the District within thirty (30) days. If the claim or any portion of the claim remains in dispute following the meet and confer ("meet and confer conference") to be scheduled by the District within 30 days, the claimant may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed is tolled from the time the claimant submits a written claim until the time the claim is denied, including time utilized as a result of the meet and confer process, including time utilized by the meet and confer process.
- e. If a civil action is filed to resolve claims within sixty (60) days (but no earlier than thirty (30) days) following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation

process shall provide that both parties select a disinterested third person mediator within fifteen (15) days, shall be commenced within thirty (30) days of the submittal and concluded within fifteen (15) days from the commencement of the mediation unless time is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

- f. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to chapter 2.5 (commencing with section 1141.10) of title 3 of part 3 of the Code of Civil Procedure, notwithstanding section 1141.11 of that code. The Civil Discovery Act of 1986 (article 3 [commencing with section 2016] of chapter 3 of title 3 or part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The court may, upon request by any party, order any witness to participate in the mediation or arbitration process.
- g. Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates not to exceed their customary rate. Such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds. Any party who, after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment, shall pay the attorney's fees of the other party arising out of the trial de novo in addition to payment of costs and fees required under chapter 2.5 (commencing with section 1141.10) of title 3 of part 3 of the Code of Civil Procedure. District shall not fail to pay any portion of a claim which is undisputed unless otherwise provided herein and shall pay interest at the legal rate commencing on the date the suit is filed in court on any arbitration award or judgment.
- h. Any arbitration, mediation or other forms of alternate dispute resolution shall be handled within the boundaries of the District unless otherwise mutually agreed.

Article 71. RESOLUTION OF CONSTRUCTION CLAIMS IN EXCESS OF \$375,000

- a. If a dispute in excess of a total value of \$375,000, arises out of, or relates to this contract, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree that as a condition precedent to the initiation of litigation, the dispute shall first be submitted to mediation pursuant to this Article 71. The mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable resolution of the dispute. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.
- b. Either party may initiate mediation by notifying the other party or parties in writing. A Request for Mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.
- c. The mediation process set forth in this section shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator").
- d. The costs for all mediation, including the administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
- e. A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction matters and will be selected from lists

furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.

- f. At least ten (10) days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each party to supplement such information.
 - g. Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed to by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as they relate to either party's legal position. There shall be no stenographic record of the mediation.
 - h. Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator. The parties may have an attorney present and shall advise the other parties no less than five (5) working days before the mediation of their intent to have an attorney present, so that the other parties may also have their attorneys present.
 - i. The mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.
 - j. The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.
 - k. Any resultant agreements from mediation shall be documented in writing, as agreed upon during the mediation, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery in subsequent proceedings.
 - l. The Mediation shall be terminated by the execution of a Settlement Agreement by the parties; by a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the Mediation proceedings are terminated.
 - m. If mediation is unsuccessful in resolving the dispute, the parties thereafter may agree to submit the matter to the Administrator for binding arbitration. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree to three (3) arbitrators in writing. The parties further agree that they will faithfully observe this agreement, and that the parties will abide by and perform any award rendered by the arbitrator(s), that a judgment of a court having competent jurisdiction may be entered upon the award, and that such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s) fees and expenses. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Section 1280 through 1294.2. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.
1. Any arbitration, mediation or other forms of alternate dispute resolution shall be handled within the boundaries of the District unless otherwise mutually agreed.

Article 72. GOVERNING LAW AND VENUE

This Contract shall be governed in accordance with the laws of the State of California and venue shall be in San Joaquin County.

Article 73. FINGERPRINTING

The determination of fingerprinting requirements are set forth in the Special Conditions.

- a. Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More than Limited Contact with Students.

If the District determines based on the totality of the circumstances concerning the Project that the Contractor and Contractor's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Agreement/Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Contractor shall, at Contractor's own expense, (a) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, or (b) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (c) provide for the surveillance of the Contractor and Contractor's employees by a District employee; and (d) Contractor and Contractor's employees shall not use student restroom facilities;

- b. Contracts for Construction, Reconstruction Rehabilitation or Repair of a School Facility Involving Only Limited Contact With Students.

If the District determines based on the totality of the circumstances concerning the Project that the Contractor and Contractor's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have only limited contact with pupils, by execution of the Agreement/Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Contractor and/or Contractor's employees on a school site: (1) Contractor and/or Contractor's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Contractor and/or Contractor's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location Contractor and/or Contractor's employees shall not change locations without contacting the school office; (4) Contractor and Contractor's employees shall not use student restroom facilities; and (5) If Contractor and/or Contractor's employees find themselves alone with a student, Contractor and Contractor's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

Article 74. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOILS

If the project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with water quality guidelines in effect for San Joaquin County and, when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

Article 75. NO ASBESTOS

- a. The Contractor will be required to execute and submit a Certificate Regarding Non-Asbestos Containing Materials.
- b. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 2. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 3. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- c. If removal of asbestos containing materials is part of the project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
- d. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Agreement, the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its District's Design Representative, Project Manager, and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities.
- e. Contractor shall review existing **AHERA report** regarding asbestos at work sites. The existing AHERA report is available for review. All asbestos-containing material identified by the Contractor in the proposed areas of work, which is not identified in the current AHERA report, shall be immediately reported to District representative. Per Article 52, Hazardous Materials Removal, the District shall assume responsibility for such asbestos removal.

ARTICLE 76. LABOR COMPLIANCE PROGRAM (Not Applicable to this Project)

A labor compliance program is required if the project will be funded by either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 and if a notice to proceed will be issued on or after April 1, 2003. **A determination regarding whether a labor compliance program is required is contained in the instructions to bidders.** If a labor compliance program is required, the following applies to this contract:

This contract is subject to a labor compliance program, as described in subdivision (b) of Section 1771.5 of the Labor Code. The Labor Compliance Program is incorporated by reference into the Contract and it will be enforced as required by state law and regulations and the Director of the Department of Industrial Relations. That law requires that District's labor compliance program shall include, but not be limited to, the following requirements:

- (a) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.
- (b) A pre-job conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.
- (c) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.
- (d) The District shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.
- (e) The District shall withhold contract payments when payroll records are delinquent or inadequate.
- (f) The District shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

Article 77. Notification of Third Party Claims

The District shall provide the Contractor with timely notification of the receipt by the District of any third party claim relating to this contract, and the District may charge back to the Contractor the cost of any such notification.

END OF GENERAL CONDITIONS DOCUMENT

SPECIAL CONDITIONS

A. Term of Contract, Pricing and Renewals: Pursuant to approval by the District's Governing Board, it is anticipated the initial contract awarded as a result of this RFP shall be for a 1.5 year period from date of award.

B. Bonds. Contractor shall provide a bid bond in the amount of ten (10%) of the contract price.

Contract shall include a payment bond in the total amount of bid or as specified in the Information to Bidders.

A performance bond in the amount of one hundred percent (100%) of the contract price or as specified in the Information for Bidders will be required on all contracts awarded under this Request for Bid.

C. Insurance. As provided in General Conditions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain either:

Comprehensive General Liability Insurance.
with a combined single limit per occurrence
of not less than \$1,000,000

OR

Commercial General Liability and Property Damage Insurance
(including automobile insurance) which provides limits of not less than:

- (a) Per occurrence (combined single limit) \$1,000,000.
- (b) Project Specific Aggregate (for this project only) \$2,000,000.
- (c) Products/Completed Operations \$1,000,000.
- (d) Personal & Advertising Injury limit \$1,000,000.

AND

Builder's Risk (or Course of Construction Coverage) Applicable/Fire Insurance

(See Article 22) Project Replacement Value at..... 100%
(One Hundred Percent)

Insurance Covering Special Hazards: Following special hazards shall be covered by riders or riders to above-mentioned commercial liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance, in amounts as follows:

- Automotive and truck where operated in amounts \$500,000.
- Material hoist where used in amounts \$500,000.
- Explosion, collapse & Underground (XCU) coverage \$500,000.
- Excess Liability Insurance coverage in the amount of \$500,000.

Additional Insured Endorsement: Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's board of trustees, and the officers, agents, employees and volunteers of District, the State Allocation

Board, if applicable, the District's Design Representative, and the District's Design Representative's consultants, individually and collectively, as additional insureds.

D. Executed Copies: The number of executed copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works required is 2.

E. License Classification: Contractor shall be licensed pursuant to the Business and Professions Code in the following classification: **"C-7" – Low Voltage Systems.**

F. Invoicing: Contractor shall issue separate invoices on a monthly basis for all services provided. For the District's portion of the billable amount, invoices shall be submitted to:

Stockton Unified School District
Business Services Department
Attn: Accounts Payable
701 N. Madison Street, Stockton, CA 95205

For the Erate discounted portion of the billable amount, invoices must be submitted in accordance with applicable Erate program instructions. Invoices are NOT to be submitted to the District for the approved Erate portion of the billable amount.

Each invoice for the District's portion must reference BID/CONTRACT NO.986 and the assigned, applicable invoice number. Invoices for the District's portion shall be processed for payment once a month.

Invoicing Requirements:

- (a) Invoicing for all billed materials/labor/services shall be submitted in triplicate, itemized (individual circuit basis), invoiced monthly, and shall include:
- (b) Billing dates
- (c) Detail of installation, pro-rated, and other one-time charges
- (d) Detail of monthly recurring charges
- (e) Taxes and surcharges
- (f) Credits and adjustments

G. Gratuities: District policy precludes employees from accepting any gratuities from Contractors. Rebates or any other form of commission or discount must be issued to the Stockton Unified School District.

H. Right To Acquire Equipment and Services: Nothing in this agreement shall prohibit the District from acquiring the same type or equivalent equipment and/or services from other sources, when deemed to be in the District's best interest.

I. Fingerprinting: Pursuant to the provisions of Article 73 of the General Conditions:

District Determination of Fingerprinting Requirement Application is as follows:

The District has considered the totality of the circumstances concerning the Project and has determined that the Contractor and Contractor's employees,

- a. X are subject to the requirements of Education Code section 45125.2 and Paragraph (a) of Article 73 of the General Conditions.
- b. _____ are not subject to the requirements of Education Code section 45125.2 and are subject to Paragraph (b) of Article 73 of the General Conditions.

J. Liquidated Damages: The agreed liquidated damages provision established in Article 6 of the General Conditions is One Thousand Dollars (\$1,000.00) per calendar day.

SPECIFICATIONS

Wi-Fi Coverage Addition

INTRODUCTION

The **Stockton Unified School District**, herein referred to as **the District**, needs additional Wi-Fi access point (WAP) devices to help bolster Wi-Fi signals in all classrooms for specified school sites. The winning solution provider shall be referred to as **the vendor**.

At present the District uses the Ruckus Wireless-based wireless solution composed of:

- Three (3) Ruckus SmartZone wireless controllers (Ruckus model SZ124); controllers 1, 2, and 3 have 691, 650, and 671 WAPs, respectively.
- 2,012 WAPs total (mostly ZoneFlex R710, and some ZoneFlex R700 series)

At some school sites, there are classrooms that do not have dedicated WAP. Computers in those rooms use Wi-Fi signals from adjacent rooms that do have a WAP. It is the goal of this RFP to acquire a WAP for each classroom that doesn't have one.

WAP REQUIREMENTS

- WAP: Ruckus R730 (or equivalent); an indoor device based on 802.11ax 8x8:8 Wi-Fi AP with 5Gbps backhaul
- Quantities: See the **Table 1** below for quantities by site:

Table 1. WAP Quantities by Site

Site Name	Qty
Cleveland	17
Elmwood	18
Grunsky	13
Harrison	14
Hazelton	14
Hong-Kingston	15
Hoover	18
Huerta	7
King	21
Kohl	1
Madison	16
Marshall	22
McKinley	16
Monroe	13
Montezuma	19
Peyton	13
Pittman	10
Pulliam	14
Rio Calaveras	16
San Joaquin	15

Skills	22
Spanos	7
Taft	13
Taylor	17
Van Buren	15
Victory	14
Wilson	7

INSTALLATION & TESTING

Upon award of contract, the District shall provide the vendor site maps for each school in Table 1 above. Each classroom at each site that needs a WAP has an existing ceiling mounted dual-port network drop for use by this project. The dual port network drops and are typically located in the middle of the ceiling – either mounted on the ceiling (visible from below) or hidden just above the drop ceiling.

That said, the vendor shall be responsible for acquiring, provisioning, installing, and testing all WAPs under this project using those network drops.

The vendor shall ensure no Wi-Fi service interruptions occur during District operational hours in the course of project execution. This may require the vendor to return as many times as necessary to complete the work.

The District recognizes that it will take some time to deploy the additional WAPs. To ensure that the day-to-day business of running a school district, school administration, and teaching students aren't interrupted, the vendor shall comply with the following deployment directives:

- Physical WAP Installation: Under no circumstances shall the vendor physically install/mount WAPs in classrooms while classes are in session. This implies that in general, the vendor shall perform physical mounting and testing after classes have ended for the day. This will vary by school.
- Wi-Fi Services: In the process of installing and turning up the additional WAPs, wireless network services shall continue to be available during school hours. School hours are different for each school. The vendor shall coordinate with the District appointed technical contact to determine school hours for each school.
- Working Hours: Project work at all sites shall be scheduled in a way not to interfere with the daily operations of any sites. Any exceptions shall be approved and coordinated with the District appointed technical contact.
- Documentation and Knowledge Transfer: Documentation and knowledge transfer are necessary to ensure a smooth transition from implementation to production. The vendor shall account for time necessary to perform knowledge transfer before the District Information Services department takes full operational control of the solution. Documentation in electronic format, for all equipment and software solutions, shall be provided to the District. Two (2) full set shall be delivered using two (2) USB thumb drives.

MAINTENANCE AND PRODUCT SUPPORT

Include a 3-year maintenance/product support with each WAP. At a minimum, maintenance/product support shall include:

- Replacement of defective/failed units

- Licensing for each WAP
- Firmware/software updates/upgrades
- Technical support services

Quotation Page - Pricing

Pursuant to and in compliance with your Notice to Contractors Calling for Bids and the other documents relating thereto, the undersigned bidder, having thoroughly examined and familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract and the cost of the work at the place where the work is to be done, and with the drawings and specifications and other contract documents, hereby proposes and agrees to perform, within the time stipulated, the contract, including all of its component parts, and everything required to be performed, and to provide and furnish any and all of the labor, materials, including all sales and use taxes, surcharges, fees, tools, expendable equipment, and all utility and transportation services necessary to perform the contract and complete in a workmanlike manner all of the work required in connection with the:

**Wi-Fi Coverage Addition
RFP No. 986**

all in strict conformity with the drawings and specifications and other contract documents, including addenda nos. _____, _____, _____, and _____, on file at the office of Purchasing

Manager of District for the sum of:

_____.

SPECIAL NOTE: It is the expectation of Stockton Unified School District that any respondent to this solicitation familiarize themselves with the impact that any as yet unknown tariff(s) imposed upon particular manufacturer's products and are appropriately accounted for in the respondent's fee proposal. SUSD presumes a 25% tariff will be imposed on any manufacturer's networking equipment manufactured abroad and will be applicable at the time of purchase throughout the term of any agreement resulting from this solicitation (including any mutually agreed upon extensions). **PLEASE INCLUDE THIS 25% TARIFF WHEN COMPLETING THE PRICING.** It is also the expectation of Stockton Unified School District that should the presumed tariff be LESS than 25% or not ultimately be imposed upon the manufacturer's product, the cost saving will be passed along to SUSD and, in turn, the FCC's E-Rate program as well. It should also be presumed by respondents that should any tariff imposed upon a particular manufacturer's product be higher than 25% at the time of purchase, SUSD will appropriately compensate the service provider for the full cost incurred at the time of purchase without regard to E-Rate eligible invoicing.

Important Note: All bidders must provide a complete unit price itemization for all materials and labor to be provided pursuant to the specifications and scope of work provided herein. Itemization shall be provided by site. Failure to provide the required itemization will result in rejection of the bid. The itemization shall be included in Section IV of the proposal.

I, _____, the _____ of the bidder, hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted by the bidder in connection with this bid and all of the representations made herein are true and correct.

Executed on this _____ day of _____, 20__ at _____ County, California.

Proper Name of Bidder _____

By _____

Signature of Bidder

Service Provider Identification No. (SPIN)

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signatures of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his or her signature shall be placed above.

Business Address: _____

Place of Residence: _____

Telephone: () _____

DOCUMENT 00 43 13
BID BOND

(Note: If Bidder is providing a bid bond as its bid security, Bidder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, as _____
_____ as Principal ("Principal"),
and _____

_____ as Surety ("Surety"), a corporation organized and existing under and by virtue of the laws of the State of California and authorized to do business as a surety in the State of California, are held and firmly bound unto the Stockton Unified School District ("District") of _____ County, State of California as Obligee, in the sum of

_____ Dollars (\$ _____)

lawful money of the United States of America, for the payment of which sum well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted a bid to the District for all Work specifically described in the accompanying bid;

NOW, THEREFORE, if the Principal is awarded the Contract and, within the time and manner required under the Contract Documents, after the prescribed forms are presented to Principal for signature, enters into a written contract, in the prescribed form in accordance with the bid, and files two bonds, one guaranteeing faithful performance and the other guaranteeing payment for labor and materials as required by law, and meets all other conditions to the contract between the Principal and the Obligee becoming effective, or if the Principal shall fully reimburse and save harmless the Obligee from any damage sustained by the Obligee through failure of the Principal to enter into the written contract and to file the required performance and labor and material bonds, and to meet all other conditions to the Contract between the Principal and the Obligee becoming effective, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect. The full payment of the sum stated above shall be due immediately if Principal fails to execute the Contract within seven (7) days of the date of the District's Notice of Award to Principal.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorneys' fee to be fixed by the Court.

If the District awards the bid, the security of unsuccessful bidder(s) shall be returned within sixty (60) days from the time the award is made. Unless otherwise required by law, no bidder may withdraw its bid for ninety (90) days after the date of the bid opening.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day _____ of _____

_____, 20____.
(Affix Corporate Seal)
Principal _____

By _____

(Affix Corporate Seal) _____
Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Bidder must attach Power of Attorney and Certificate of Authority for Surety and a Notarial Acknowledgment for all Surety's signatures. The California Department of Insurance must authorize the Surety to be an admitted Surety Insurer.

END OF DOCUMENT

LIST OF PROPOSED SUBCONTRACTORS

CONTRACTOR'S NAME: _____

In compliance with the "Subletting and Subcontracting Fair Practices Act," Sections 4100 through 4114 of the California Public Contract Code, and any amendments thereto, each Bidder shall provide the information requested below for each subcontractor who will perform work, labor or render service to Bidder in or about the construction of the Work in an amount in excess of one-half of one percent (greater than 0.5 %) of the Bidder's Total Bid Price, or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the Contractor's total bid or ten thousand dollars (\$10,000), whichever is greater, and shall further set forth the portion of the Work which will be done by each subcontractor. Bidder shall list only one subcontractor for any one portion of the Work.

If the Bidder fails to specify a subcontractor for any portion of the Work to be performed under the Contract, it shall be deemed to have agreed to perform such portion itself, and shall not be permitted to subcontract that portion of the Work except under the conditions hereinafter set forth below.

Subletting or subcontracting of any portion of the Work in excess of one half of one percent (greater than 0.5%) of the Total Bid Price or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the Contractor's total bid or ten thousand dollars (\$10,000), whichever is greater, for which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after Owner approval.

Within **one business day** after the bids are opened, each bidder must provide the address, telephone number and contractor license number for each listed subcontractor unless such information is noted herein.

[Duplicate Page if needed for listing additional subcontractors)

<u>Name and Location of Subcontractor</u>	<u>Description of Work to be Subcontracted</u>
Name: _____	_____
Address: _____	_____
Ph: _____ Fax: _____	License No. _____

<u>Name and Location of Subcontractor</u>	<u>Description of Work to be Subcontracted</u>
Name: _____	_____
Address: _____	_____
Ph: _____ Fax: _____	License No. _____

DOCUMENT 00 61 13.13
PERFORMANCE BOND
(100% of Contract Price)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Stockton Unified School District, ("District") and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

Wi-Fi Coverage Addition (Project Name)

("Project" or "Contract") which Contract dated _____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, _____ THEREFORE, _____ the _____ Principal _____ and

_____ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of

_____ Dollars (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Work nor shall Surety accept a Bid from Principal for completion of the Work if the District declares the Principal to be in default and notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The

obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____

day of _____, 20____.

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone No. of California Agent of Surety

Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

PAYMENT BOND TO ACCOMPANY CONTRACT

Know All Men by These Presents:

THAT WHEREAS, the STOCKTON UNIFIED SCHOOL DISTRICT has awarded to _____, as principal, hereinafter designated as the "Contractor," a contract for the work described as follows:

_____ PROJECT

AND WHEREAS, said Contractor is required by the provisions of Chapter 7, Title 15, Part 4, Division 3, section 3247 *et seq.*, Civil Code, to furnish a bond in connection with said contract;

NOW, THEREFORE, we the undersigned Contractor and Surety are held and firmly bound unto the STOCKTON UNIFIED SCHOOL DISTRICT in the sum of _____ dollars (\$_____), said sum being determined consistent with the provisions of section 3248 of the Civil Code, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if said Contractor, its heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any materials, provisions, provender, or other supplies or teams, implements or machinery used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, as required by the provisions of Chapter 7, Title 15, Part 4, Division 3, section 3247 *et seq.* of the Civil Code, and provided that the claimant shall have complied with the provisions of said Code, the surety or sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond the said surety or sureties will pay all court costs, expenses and the reasonable attorney's fees fixed by the court in the event the claimant is deemed to be the prevailing party. This bond shall inure to the benefit of any and all persons, companies or corporations entitled to file claims under section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. And the said surety, for value received, hereby stipulated and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect is obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, A.D., 20____.

Contractor

(This bond must be signed and acknowledged by both Principal and Surety before a Notary Public, and acknowledgments, with Notarial Seals, attached hereto.) _____(Seal)

Surety

Attorney-in-fact

**IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code sections 2202-2208)**

PROJECT/CONTRACT NO.: 986 between Stockton Unified School District (“District”) and

_____ (“Contractor” or “Bidder”) (“Contract” or “Project”).

Prior to bidding on or submitting a proposal for a contract for goods or services of \$1,000,000 or more to the District, the Bidder must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or to enter into or to renew, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>	

DOCUMENT 00 45 26
WORKERS' COMPENSATION CERTIFICATION

PROJECT/CONTRACT NO.: **986** between Stockton Unified School District ("District") and _____ ("Contractor" or "Bidder") ("Contract" or "Project").

Labor Code section 3700, in relevant part, provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state; and/or
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Labor Code sections 1860 and 1861, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END OF DOCUMENT

DOCUMENT 00 45 46. 01

**PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT NO.: _____ 986 between Stockton Unified School District ("District") and _____. ("Contractor" or "Bidder") ("Contract" or "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

HAZARDOUS MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: 986 between Stockton Unified School District ("District") and _____ . ("Contractor" or "Bidder") ("Contract" or "Project").

- 2. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), lead, radioactive materials, hydrocarbons, or any material or substance listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (including, without limitation, 42 U.S.C. 6901, *et seq.*; 42 U.S.C. 9601, *et seq.*; 22 CCR §66261.30, *et seq.*; & Health & Saf. Code, §25117) ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.
- 3. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
- 4. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) asbestos shall be defined as asbestos-containing material.
- 5. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
- 6. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material" will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.
- 7. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein. Contractor certifies that it is knowledgeable of, and shall comply with, all laws applicable to the Work, including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

CRIMINAL BACKGROUND

INVESTIGATION/ FINGERPRINTING CERTIFICATION

PROJECT/CONTRACT NO.: **986** between the Stockton Unified School District ("District") and _____ ("Contractor" or "Bidder") ("Contract" or "Project").

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Contractor currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Contractor.

_____ Contractor certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that applies):

_____ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is
Name:

Title:

_____ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

DOCUMENT 00 45 01
SITE VISIT CERTIFICATION
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID
IF SITE VISIT WAS MANDATORY

PROJECT: **Wi-Fi Coverage Addition**

Check option that applies:

_____ I certify that I visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. I fully understand the facilities, difficulties, and restrictions attending the execution of the Work under contract.

_____ I certify that

_____ (Bidder's representative) visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. The Bidder's representative fully understood the facilities, difficulties, and restrictions attending the execution of the Work under contract.

Bidder fully indemnifies the _____ Stockton Unified School District, its Architect, its Engineer, its Construction Manager, and all of their respective officers, agents, employees, and consultants from any damage, or omissions, related to conditions that could have been identified during my visit and/or the Bidder's representative's visit to the Site.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

AGREEMENT

This Agreement is entered into on this _____ day of _____, 20____ by and between the Stockton Unified School District, hereinafter referred to as "District", and _____ hereinafter referred to as "Contractor".

In consideration of the promises and mutual covenants contained herein, it is agreed between the parties as follows:

I TERM

The term of this Agreement shall commence upon execution of this agreement by all parties and shall continue through acceptance by the District of all required work and final payment to Contractor. All indemnification provisions contained in the Agreement shall survive beyond the expiration of the Agreement. **The term of this Agreement shall conform to E-RATE timelines.**

II SCOPE OF WORK

The Contractor shall perform within the time stipulated the contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner all the work required in connection with the following titled project:

Wi-Fi Coverage Addition RFP No. 986

in strict compliance with the contract documents as specified in Section III below.

III NON-FUNDING OF ERATE OR CTF

The District's obligation to procure services provided under this contract are contingent upon Stockton Unified School District receiving a fully-funded Erate Funding Commitment Decision Letter (FCDL) for each year of eligible services and being able to fully participate in the CTF program. No termination liability penalties will apply if either Erate money discounts are denied, reduced, or discontinued, or if the CTF discounts are denied, reduced, or discontinued.

IV NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision to the contrary, if for any fiscal year of this Agreement the Governing Board for any reason fails to appropriate or allocate funds for future payments under this Agreement, the District will not be obligated to pay the balance of funds remaining unpaid beyond the fiscal period for which funds have been appropriated and allocated.

V
TERMINATION

This Agreement may be terminated by the District upon thirty (30) days' written notice to Contractor. The District's right to terminate under this paragraph shall be in addition to any other rights reserved to District under this contract.

VI
CONTRACT PRICE

The District shall pay to the Contractor as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the contract documents, and including any applicable sales, use or other taxes or costs as specified in the executed pricing sheet(s) incorporated herein by reference.

VII
COMPONENT PARTS OF THE CONTRACT

The contract entered into by this Agreement consists of the following contract documents (referred to herein as the contract or the contract documents), all of which are component parts of the contract as if herein set out in full or attached hereto:

Notice Requesting Bids
Bid Form
Noncollusion Affidavit
Instructions
General Conditions and Special Conditions
Specifications/Drawings
Pricing/Response Pages
Contractor's Certificate Regarding Workers' Compensation Agreement
Performance Bond
Payment Bond for Public Works
Fingerprinting and Drug Free Workplace Certifications
Specification Addenda Nos. _____, _____, _____, as issued

All the above-named contract documents are intended to be complementary. Work required by one of the above-named contract documents and not by others shall be done as if required by all. This agreement shall supersede any prior agreement of the parties.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above-named parties, on the day and year first above written.

CONTRACTOR

STOCKTON SCHOOL DISTRICT

Signature_____

Signature _____

By _____

By _____

Title _____

Title _____

Date _____

Date _____

Name of Contractor _____

Board Approval Date _____

(Corporate Seal)

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:

Contractors' State License Board
9821 Business Park Drive
Sacramento, CA 95827
(916) 255-3900
<http://www2.cscb.ca.gov/>

(Business & Professions Code, section 7030)

Section XI

E-RATE SUPPLEMENTAL TERMS AND CONDITIONS

Signed copy to be returned with bid response.

The Telecommunications Act of 1996 established a fund by which Schools and Libraries across the Country could access discounts on eligible telecommunications products and services. The program is commonly known as the E-rate Program. The eligibility for discounts on internet access, telecommunications products and services, internal connection products, services and maintenance is determined by the Federal Communications Commission (FCC). Funding is made available upon application approval by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), which was established by the Act. The amount of discount is based on the numbers of students receiving free and reduced price meals.

1) E-RATE CONTINGENCY

The project herein may be contingent upon the approval of funding from the Universal Service Fund's Schools and Libraries Program, otherwise known as E-rate. Even after award of contract(s) and/or E-rate funding approval is obtained, the District may or may not proceed with the project, in whole or in part. Execution of the project, in whole or in part, is solely at the discretion of the District.

2) SERVICE PROVIDER REQUIREMENTS

The District expects Service Providers to make themselves thoroughly familiar with any rules or regulations regarding the E-rate program.

a. Service Providers are required to be in full compliance with all current requirements and future requirements issued by the SLD throughout the contractual period of any contract entered into as a result of this RFP.

b. Service Providers are responsible for providing a valid SPIN (Service Provider Identification Number). More information about obtaining a SPIN may be found at this website: <http://www.usac.org/sl/service-providers/step01/default.aspx>

c. Service Providers are responsible for providing a valid Federal Communications Commission (FCC) Registration Number (FRN) at the time the bid is submitted. More information about obtaining an FRN may be found at this website: <https://fjallfoss.fcc.gov/coresWeb/publicHome.do>

d. Service Providers are responsible for providing evidence of FCC Green Light Status at the time the bid is submitted. Any potential bidder found to be in Red Light Status will be disqualified from participation in the bidding process and will be considered non-responsive. More information about FCC Red and Green Light Status may be found at this website: http://www.fcc.gov/debt_collection/welcome.html

e. Products and services must be delivered before billing can commence. At no time may the Service Provider invoice before July 1, 2018.

f. Prices must be held firm for the duration of the associated E-rate Funding Year(s) or until all work associated with the project is complete (including any contract and USAC approved extensions).

g. Goods and services provided shall be clearly designated as “E-rate Eligible”. Non-eligible goods and services shall be clearly called out as 100% non-eligible or shall be “cost allocated” to show the percentage of eligible costs per SLD guidelines.

h. Within one (1) week of award, the awarded Service Provider must provide the District a bill of materials using a completed USAC “Item 21 Template”. Subsequent schedules of values and invoices for each site must match Item 21 Attachment or subsequent service substitutions. A summary sheet must also be provided to provide the cumulative amount for all sites.

i. In the event of questions during an E-rate pre-commitment review, post-commitment review and/or audit inquiry, the awarded Service Provider is expected to reply within 3 days to questions associated with its proposal.

j. The awarded Service Provider is required to send copies of all forms and invoices to the District prior to invoicing USAC for pre-approval. Failure to comply with this requirement may result in the District placing the vendor on an “Invoice Check” with the USAC <http://www.usac.org/sl/applicants/step07/invoice-check.aspx>

k. Services providers must comply with the FCC rules for Lowest Corresponding Price ("LCP"). Further details on LCP may be obtained at USAC's website: <http://www.usac.org/sl/service-providers/step02/lowest-corresponding-price.aspx>

3) SERVICE PROVIDER ACKNOWLEDGEMENTS

a. The Service Provider acknowledges that no change in the products and/or services specified in this document will be allowed without prior written approval from the district and a USAC service substitution approval with the exception of a Global Service Substitutions.

b. The Service Provider acknowledges that all pricing and technology infrastructure information in its bid shall be considered as public and non-confidential pursuant to §54.504 (2)(i)(ii).

c. The Service Provider acknowledges that its offer is considered to be the lowest corresponding price pursuant to § 54.511(b). Should it not be the lowest corresponding price, the service provider must disclose the conditions leading to the applicant being charged in excess of lowest corresponding price.

d. This offer is in full compliance with USAC's Free Services Advisory <http://www.usac.org/sl/applicants/step02/free-services-advisory.aspx>. There are no free services offered that would predicate an artificial discount and preclude the applicant from paying its proportionate non-discounted share of costs. The service provider agrees to provide substantiating documentation to support this assertion should the applicant, USAC, or the FCC request it.

4) STARTING SERVICES/ADVANCE INSTALLATION

The annual E-rate Funding Year begins on July 1 and expires on June 30 of each calendar year. Regardless of the contract "effective date", E-rate eligible goods and/or services requested in this RFP shall be delivered no earlier than the start of the 2018 funding year (July 1, 2018). If Category 1 services (Telecommunication Services and Internet access) will begin on or shortly after July 1 of a funding year, the service provider, in some cases, may need to undertake some construction and installation work prior to the beginning of that funding year. Within the limitations indicated below, the infrastructure costs of a service provider can be deemed to be delivered at the same time that the associated Category 1 services begin. That is, if services begin on July 1, then the delivery of service provider infrastructure necessary for those services can be considered as also delivered on July 1.

EARLY FUNDING CONDITIONS

Category 1

There are four conditions that must be met in order for USAC to provide support in a funding year for Category 1 infrastructure costs incurred prior to that funding year.

- *Initiation of installation cannot take place before selection of the service provider pursuant to a posted Form 470 and in any event no earlier than six months prior to July 1 of the funding year.*
- *The Category 1 service must depend on the installation of the infrastructure.*
- *The underlying Category 1 service cannot have a service start date prior to July 1 of the funding year.*
- *No invoices can be submitted to USAC for reimbursement prior to July 1 of the funding year.*

For more information, please refer to the FCC Order involving the Nassau County Board of Cooperative Educational Services ([DA 02-3365](#) , released December 6, 2002). This FCC decision only applies to Priority 1 services (telecommunications services and Internet access).

The complete text can be found at the following URL:

<http://www.usac.org/sl/applicants/step05/installation.aspx>

Category 2

There is one condition that allows USAC to provide support in a funding year for Category 2 installation costs incurred prior to that funding year.

We also amend our rules for category two non-recurring services to permit applicants to seek support for category two eligible services purchased on or after April 1, three months prior to the start of funding year on July 1. This will provide schools with the flexibility to purchase equipment in preparation for the summer recess and provide the maximum amount of time during the summer to install these critical networks.

For more information, please refer to the FCC Report and Order and Further Notice of Proposed Rulemaking ([FCC 14-99](#), released July 23, 2014). This FCC decision only applies to Category 2 services (Internal Connections).

5) INVOICING

a. The Service Provider agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from USAC via the Form 474 Service Provider Invoice (SPI). The District will only be responsible for paying its non- discounted share of costs and does not intend to use the BEAR process (Form 472). The maximum percentage the District will be liable for is the pre-discount amount minus the funded amount as shown on the FCC Form 471 Block 5 and any identified ineligible costs. Upon the successful receipt or posting of a Funding Commitment Decision Letter from the SLD and submission and certification of Form 486, the District shall pay only the discounted amount beginning with the billing cycle immediately following said approval. Alternatively, should the District decide that it is in the best interest of the District to file a Form 472, the District will inform the Service Provider of its intent.

b. All Service Provider invoicing to USAC must be completed within 120 days from the last day of service. Should the Service Provider fail to invoice USAC in a timely manner, the District will only be responsible for paying its non-discounted share.

6) FCC/SLD AUDITABILITY

The E-rate program requires that all records be retained for at least ten (10) years from the last date of service provided on a particular funding request. Respondent hereby agrees to retain all books, records, and other documents relative to any Agreement resulting from this RFP for ten (10) years after final payment. The District, its authorized agents, and/or auditors reserves the right to perform or have performed an audit of the records of the Respondent and therefore shall have full access to and the right to examine any of said materials within a reasonable period of time during said period.

7) Procurement of additional goods and/or services/coterminous expiration

During the term of any Agreement resulting from this RFP, the District may elect to procure additional or like goods and/or services offered by the Respondent. Such services shall be negotiated and obtained via an official amendment to this Agreement and approval by the District's Governing Board. All terms, conditions, warranties, obligations, maintenance and support of said goods or services shall have a coterminous expiration date with the original date of this Agreement. The District shall not enter into a separate Agreement for said goods or services. Respondents must state in their proposal that they acknowledge, accept and are in agreement with coterminous expiration conditions.

I, the undersigned, as an authorized agent of _____
(Service Provider Name), hereby certify that I have read the E-rate Supplemental
Terms and Conditions, am fully compliant and intend to cooperate with the E-rate
process as outlined above.

Signature: _____

Title: _____

Phone Number: _____

Email: _____

Service Provider Name: _____